

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ALLEGRA M.,

Claimant,

and

INLAND REGIONAL CENTER,

Service Agency.

OAH No. L 2006070005

DECISION

On September 18, 19 and 20 and on October 23, 2006, in San Bernardino, California, Vallera J. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Deborah K. Crudup, Program Manager, represented Inland Regional Center, the service agency.

Jillian Bonnington, Advocate, with Possibilities, represented Allegra M., claimant.

The matter was submitted on November 1, 2006.¹

ISSUE

Whether the service agency offered and/or provided placement in accordance with Welfare and Institutions Code section 4418.7 assessment recommendations and those of the

¹ The parties filed written Closing Argument subsequent to the hearing. The service agency's Closing Argument was filed on October 27, 2006, and was marked Exhibit 32. On October 30, 2006, claimant filed her Closing Brief, which was marked as Exhibit A-34. The service agency's Response to claimant's Closing Argument was filed on November 1, 2006, and was marked Exhibit 33. On November 1, 2006, the record was closed, and the matter was submitted.

FACTUAL FINDING

1. Born October 4, 1999, Allegra M. (claimant), lives in the family home with her mother, maternal grandparents, and maternal great grandmother.

2. Claimant is eligible to receive services from the Inland Regional Center (service agency) with a diagnosis of Autism. In addition, she has a diagnosis of Bipolar Disorder Not Otherwise Specified.

3. Claimant's parents married one month prior to her birth, when her father was 23 years old and her mother 18 years old. They lived together approximately three months and moved into claimant's maternal grandparents' home when she was two months old. Her parents separated when she was a year old. Claimant and her mother continued to reside with her grandparents. Claimant's mother has legal custody; her grandmother holds power of attorney for claimant. Her father has no custody or visitation rights.

4. Claimant's mother had a normal pregnancy and delivery. Postnatal complications were significant in that claimant was not breathing initially after birth but ten minute APGAR scores were significantly better.

At 14 months of age, claimant walked unassisted and formed words.

Claimant's history is significant for having been exposed to violence. She was kidnapped by her father at 15 months of age and taken, in hiding, to Israel. With involvement by the Federal Bureau of Investigation, in August 2001, at 22 months of age, claimant was returned to her family in the United States. At that time, she was not talking (with sounds that resembled English) but had her "own language".

Among other things, claimant has developmental delays, language delays, social reciprocity delays and deficits in sensory processing needs.

5. Since prior to the age of two, claimant has exhibited odd, maladaptive behaviors. Claimant's grandmother describes her as an angry child, often in a "sour mood"; when in a period of escalated negative behavior, claimant appears to be in a state of anger and rage. According to claimant's family, the antecedents to claimant's behavior are unpredictable.

The family reports that claimant's negative behaviors have increased in frequency and intensity within the past year. The negative behaviors are described as self-abusive, aggressive, lack of safety awareness, and dangerous behaviors in the community.

6. During the time that claimant lived in Carlsbad, California, the San Diego Regional Center funded in-home behavior intervention services due to aggression, tantrums and noncompliance. Sandy Shaw, Ph.D. (Dr. Shaw), the Center for Autism Research, Intervention and Services (CARES), provided this service three hours a day, four days a week, for two and one-half years. In spite of the interventions, the family reports that claimant's behavior continues to be extremely impulsive and oppositional on a daily basis. She is easily angered, which is manifested in aggression, property damage and tantrums.

7. As a result of her "out of control" behavior, between September 2005 and October 2006, claimant was hospitalized on five occasions at different hospitals.

8. Claimant's first hospitalization occurred on September 8, 2005, when she was five years old. She was admitted to Loma Linda University Medical Center and Children's Hospital on that date and was later discharged on September 14, 2005. Her mother reported, "My daughter is unmanageable;" she tried to drown a neighborhood child, attacked her mother with a knife and tried to jump out of the car while it was moving; claimant had auditory and visual hallucinations and had homicidal and suicidal ideations; she had a difficult time sleeping.²

At the time of discharge, claimant was less agitated, more willing to be redirected, had improved sleep, and tolerated medications well without side effects. In Loma Linda's discharge summary, it was recommended that claimant receive follow-up care through Riverside County Mental Health in the Children's Treatment Services.

9. On June 2, 2006, claimant was admitted to University of California, Los Angeles Neuropsychiatric Hospital (UCLA) due to "increased agitation and disruptive behavior". She had been throwing things, breaking things, biting herself and banging her head. Her mother reported that, en route to her aunt's house, claimant "went nuts" in the car, began banging her head on the window, and stuck her finger in her throat. There was no apparent antecedent to this behavior. Her mother reported that claimant's aggression and dysfunction had increased during the prior six months. In addition to the foregoing, among other things, prior to her admission, claimant had periods of two to three days during which she spoke fast and had nonsensical speech accompanied by decreased sleep and increased aggression.

During her admission, claimant experienced numerous physical and verbal outbursts with no provocation, suffered significant insomnia and had difficulty with peer interactions on the unit, poor attention span in group settings and poor safety awareness. However, she was able to intermittently respond to time-outs. During the course of her hospitalization, with medication changes, her tantrums improved, and she had a dramatic decrease in aggressive behaviors.

² Medical records from Loma Linda history and physical, admitted September 7, 2005.

By letter, dated June 12, 2006, and, subsequently, in the UCLA discharge summary, dated June 22, 2006, Elizabeth E. Cowart, M.D. (Dr. Cowart), recommended that the service agency locate and fund an out-of-home placement that provides treatment tailored for children with developmental disabilities, a high degree of structure (consistency, predictability and clear expectations) and intensive behavioral intervention with 1:1 staff to patient ratio with 24-hour patient care. According to the Hospital After Care Plan, Dr. Cowart anticipated that claimant would be placed in a crisis home within a week of discharge; further, she states that if claimant was not placed in a crisis home within a week that she would need additional services to be maintained in the home and describes these services. In Dr. Cowart's opinion, the services would include 48 hours/week respite, intensive in-home behavioral intervention and coaching (social skills training and therapeutic recreational activities), on a daily basis, and a highly structured and contained school program.

10. By letter, dated June 12, 2006, Lavinia Johnson (Johnson), the service agency Program Manager who supervised claimant's Consumer Services Coordinator, requested a "4418.7"³ assessment. The purpose was to provide a recommendation to the service agency regarding alternative community placement or additional supports and services needed to keep claimant safe and to maintain her in her home or a community residential home and to deflect her from the developmental center. In Johnson's letter, she provided a brief history of claimant and attached certain relevant reports.

³ Welfare and Institutions Code section 4418.7 states:

(a) If the regional center determines, or is informed by the consumer's parents, legal guardian, conservator, or authorized representative that the community placement of a consumer is at risk of failing, and that admittance to a state developmental center is a likelihood, the regional center shall immediately notify the appropriate regional resource development project, the consumer, and the consumer's parents, legal guardian, or conservator.

(b) In these cases, the regional resource development project shall immediately arrange for an assessment of the situation, including, visiting the consumer, if appropriate, determining barriers to successful integration, and recommending the most appropriate means necessary to assist the consumer to remain in the community. If, based on the assessment, the regional resource development project determines that additional or different services and supports are necessary, the department shall ensure that the regional center provides those services and supports on an emergency basis. An individual program plan meeting, including the regional resource development project's representative, shall be convened as soon as possible to review the emergency services and supports and determine the consumer's ongoing needs for services and supports. The regional resource development project shall follow up with the regional center as to the success of the recommended interventions until the consumer's living arrangement is stable.

(c) If the regional resource development project, in consultation with the regional center, the consumer, and the consumer's parents, legal guardian, or conservator, when appropriate, determines that admittance to a state developmental center is necessary to prevent a substantial risk to the individual's health and safety, the regional resource development project shall immediately facilitate that admission.

(d) The department shall collect data on the outcomes of efforts to assist at-risk consumers to remain in the community. The department shall make aggregate data on the implementation of the requirements of this section available, upon request.

Del Buhulano (Buhulano), with the Lanterman Regional Project, performed the assessment and thereafter issued a report, dated June 19, 2006. He made the following recommendations.

- Claimant is in need of a well structured and secured environment, where she can receive appropriate treatment and training. This treatment and training should emphasize consistent programming with consistent expectations, reinforcement of appropriate behavior and consequences for inappropriate behavior. This program should assist her to learn appropriate social and coping skills. This program not only needs to be consistently followed by her direct care staff members but also must be equally adhered to by visitors, relatives and others with whom she has contact.
- She should have trained and experienced one to one staff initially to assist her to understand the consequences of her behavior. Staff should understand her ability to manipulate and avoid encouraging that behavior.
- Assistance from a Psychologist or Behaviorist that understands Full Syndrome Autism is recommended to provide training for direct care staff and family members.
- Psychological services should include a functional analysis. Behavioral support services including anger management, behavior modification intervention, effective communication skills training, coping skills training and community access skills training should be a part of her active treatment plan.
- Psychiatric services from a professional who specializes in Full Spectrum Autism should be provided. Educational services should be continued.
- Without knowing the family dynamics, she appears to come from a very loving and caring family. Once her maladaptive behaviors have reduced in severity and frequency, and she has developed better coping and social skills, the service agency may want to consider returning her to her family home.
- If an alternate community living arrangement is unavailable to provide for claimant's needs, a placement at a children's crisis home is recommended.

11. Two days after discharge from UCLA, on June 23, 2006, claimant was re-admitted due to ongoing aggression and agitation. The family reported that she had been upset and agitated, with return of self-injurious behavior, biting and hitting family members and kicking the family dog; her mother and grandparents were overwhelmed and had great difficulty managing claimant's behavior; within minutes of arriving on the unit, claimant calmed dramatically and became more coherent as if she were responding to the structure and familiarity of the milieu.

During her hospitalization, claimant's behavior was not dramatically different from her behavior at the time of discharge several days prior. She did not experience insomnia or other symptoms of mania during this hospitalization as she had previously. She continued to have intermittent tantrums when she did not get her way or limits were set, but these decreased in frequency and intensity as she remained on the inpatient unit, likely due to clear

expectations and behavioral rewards. Claimant responded well to earning privileges for good behavior. Her mother reported that during conversations with claimant, she was “clearer than ever”, apologized for her behavior and had some recognition of its inappropriateness.

In the Discharge Summary, dated July 3, 2006, Dr. Cowart reported:

“Claimant’s response to the inpatient setting with rapid improvement in her behavior again suggested that Claimant requires out-of-patient placement in an environment that would be able to tailor treatment for children with developmental disabilities, would have a high degree of structure, and have intensive behavioral intervention with 1:1 staff to patient ratio with 24-hour patient care...Unfortunately, at the time of her discharge, a placement for Claimant had yet to be identified and so she had to return home with her family. The family was to receive in-home behavior modification and respite care both in and out of the home in the interim. They felt comfortable assuming responsibility for her care and agreed with this plan.”

12. Consistent with state and federal law, the Legislature has determined that children with developmental disabilities most often have opportunities for educational and social growth when they live with their families.⁴ Regional centers provide services and supports that allow children with developmental disabilities to live at home with their families.⁵

Welfare and Institutions Code section 4685, subsection (c) (2) provides, in pertinent part:

“... Regional centers shall consider every possible way to assist families in maintaining children at home, when living at home is in the best interest of the child, before considering out-of-home placement alternatives. When the regional center first becomes aware that a family may consider an out-of-home placement, or is in need of additional specialized services to assist in caring for the child in the home, the regional center shall meet with the family to discuss the situation and the family’s current needs, solicit from the family what supports would be necessary to maintain the child in the home, and utilize creative and innovative ways of meeting the family’s needs and providing adequate supports to keep the family together, if possible. . .”

A family is required to provide for a child with disabilities as they do for a child without disabilities.⁶

⁴ Welfare and Institutions Code section 4685, subsection (a).

⁵ Welfare and Institutions Code section 4648, subsections (a) (1) and (2).

⁶ California Code of Regulations, title 17, section 54326, subsection (d) (1).

A regional center may not deny a request for services based upon the application of an inflexible policy denying such services. Whether a claimant is entitled to a particular service depends upon a consideration of all relevant circumstances.⁷

When a minor child requires an out-of-home residential placement, the service agency is required to make every effort to secure a living arrangement, consistent with the consumer's Individual Program Plan, in reasonably close proximity to the family home and in the least restrictive environment.⁸

The quality of care provided to a consumer with developmental disabilities is dependent upon a closely coordinated team effort by the regional center, the consumer's family, the proposed residential facility administrator and the licensing agency.⁹

13. Buhulano recommended a community residential placement, or a crisis home, if a bed in residential placement facility was not immediately available. He did not recommend a specific facility because he did not know what facility had a bed available. Buhulano anticipated that claimant would be placed at the Phoenix Home because the facility was located near her family's home and had an available bed. The service agency did not offer the Phoenix Home as a possible placement. Given the issue in this case, the reason for the foregoing is not relevant.

A crisis home or residential placement could be the family home with appropriate services and supports.

14. The service agency described the type of facilities that regional centers consider the least restrictive environments for out-of-home placement of a child who has developmental disabilities.

A foster family home certified by a foster family agency (FFA) is the least restrictive environment. FFAs are licensed by the State of California, Department of Social Services, Community Care Licensing (CCL). The certified foster parents are the caregivers.

The next least restrictive environment is the small family home. Licensed by CCL, the small family home is owner-operated, and the family of the licensee resides in the home with facility residents.

⁷ *Williams v. Macomber* (1990) 226 Cal.App.3d 225, 231-34.

⁸ Welfare and Institutions Code sections 4685.1 and 4648, subsection (a).

⁹ Welfare and Institutions Code section 4740 provides, in pertinent part:

“ ... The quality of care provided to persons with developmental disabilities by residential facilities is contingent upon a closely coordinated "team" effort by the regional center or its designee, the person with developmental disabilities, the parent or representative if appropriate, the residential facility administrator, and the licensing agency. The rights and responsibilities of each must be identified in order to assure clear direction and accountability for each....”

Group homes, licensed by CCL, are staff operated and may have a live-in administrator or rotating staff.

Hospitals or State developmental centers are the most restrictive environments.

The facilities described in the foregoing paragraphs of this Finding 14 provide the same services as a crisis home. The service agency has authorized funding for any services not provided by the residential facility in which claimant is placed.

15. The service agency described its efforts to locate an appropriate, out-of-home residential placement for claimant. Among other things, the service agency developed a packet that includes relevant reports that described her needs and forwarded it to potentially qualified residential placement facilities in its catchment area¹⁰ and the 20 regional centers throughout the State of California for consideration of placement. None of the regional centers had an available bed in a residential facility that meets claimant's needs. Further, the service agency has encouraged vendors and potential vendors to develop a program design for a facility that meets claimant's needs.

The service agency offered a number of potential residential placements for claimant.

HUGGS, a foster family agency, identified an unmarried woman, who lives in the Lake Arrowhead area. She is a licensed Marriage and Family Therapist (MFT) who applied for certification by HUGGS, specifically to serve claimant. She has a female tenant who lives in her home, works outside the home and has cerebral palsy. The foster parent applicant has significant experience working with children who have behavioral challenges similar to claimant. She works as a behavior specialist with HUGGS with some of their certified foster family homes and with San Bernardino County Children's Mental Health. The family declined this provider; they felt she was unqualified because she did not have sufficient experience as a foster parent.

HUGGS initiated certification of Margo Oliver and her husband as a foster family home, located in Redlands. Previously, she operated a small family home in Claremont, for children who were medically fragile and/or had behavioral issues; the home had been licensed by CCL and vendored with the Los Angeles Regional Center. Claimant's family met with Oliver and her husband and approved them. However the family and proposed foster parent mutually agreed that the residence was not appropriate because it was located in a second story apartment.

Tomasina Small Family Home is licensed by CCL and vendored by the service agency. The facility is a two-bed residence. In addition to the licensee, her husband and two biological children, there is a disabled woman who has been a resident of the facility for several years. When initially placed, the current resident presented with many behaviors

¹⁰ "Catchment" area is the community served by the regional center. The service agency serves Riverside and San Bernardino Counties.

similar to claimant's. The licensee and her behaviorist have modified these behaviors so that the resident now participates in social and community activities. Claimant's family declined this facility because the resident masturbates; though she has been trained to masturbate in private, claimant's family is concerned because she may be subjected to this behavior.

Right at Home is a group home that serves four developmentally disabled children. This facility is licensed to serve children, ages 12 to 18. CCL denied the licensee's request for an age exemption to provide services for claimant, for reasons unrelated to this matter.

16. As the service agency has not located an appropriate placement for claimant satisfactory to all relevant parties, claimant requested that the service agency consider a residential placement outside the State of California. Welfare and Institutions Code section 4519, subsection (a) provides, in pertinent part:

“ ... The department shall not expend funds, and a regional center shall not expend funds allocated to it by the department, for the purchase of any service outside the state unless the Director of Developmental Services or the director's designee has received, reviewed, and approved a plan for out-of-state service in the client's individual program plan The department shall authorize the purchase of out-of-state services when the director determines the proposed service or an appropriate alternative, as determined by the director, is not available from resources and facilities within the state...”

Given the foregoing, the service agency is obligated to pursue residential services in the State of California prior to considering options outside the State. Based on the experience of their staff, the service agency does not believe that all options for residential placement in the State of California have been exhausted. The service agency continues to follow up on referrals made for services and intends to continue to develop new options for the family to consider. Given that it is extremely rare to place a seven year old with claimant's needs outside the family home, the amount of time that the service agency has spent to pursue her residential placement is not unreasonable.

17. In the State of California, there are eight children's crisis homes. Each home has fewer than four beds. The service agency has not located or offered an available bed in a licensed, crisis home.

18. Pending the location of an appropriate residential placement, the service agency has authorized services to maintain claimant in the family home, including 140 hours of in-home respite/month, 80 hours/month of community integration/social skills training and 30 hours/week of behavioral intervention.

Claimant's respite is provided through Inland Respite Services. The family home is located in Anza, a remote area. At least one provider sent to the home has been injured by claimant and has refused to return. At this time, a teacher selected by the family provides

approximately 90 hours of respite. The search for qualified individuals, willing to travel to the family home, to provide the balance of the respite hours continues.

Pathways, an agency that provides community integration/recreational coaching services, will be funded for 80 hours/month when a qualified individual willing to travel to Anza to provide this service is located. The service agency continues to actively pursue qualified caregivers willing to provide this service for claimant in Anza.

The service agency funded an in-home behavioral assessment to determine the appropriateness of in-home behavioral services for claimant. The evaluation was performed by Nora Wilson, Psy.D. (Dr. Wilson). She recommended 30 hours/week of Applied Behavioral Analysis (ABA), the widely accepted treatment for children with Autism; further, she recommended training for all caregivers, the development of a structured daily routine, evaluation of the school placement and a speech evaluation. Claimant's family rejected the assessment and declined the behavioral intervention services.

At the family's request, the service agency has authorized behavioral services from CARES, the agency that provided behavioral training for the family in the past. CARES does not have staff available to travel to Anza to provide in-home services but is willing to provide the services at its Murrieta site.

19. In addition to the services authorized by the service agency, claimant receives services funded by other agencies.

Claimant attends the Valley Intervention Program (VIP Tots) Center, a Non-Public School program for pre-school age children funded by the Hemet Unified School District (School District). She is enrolled in an early intervention Autism class, four days a week, six hours a day. She receives one-to-one classroom aide in order to maintain positive behaviors and to manage negative behaviors.

At the Individual Education Planning meeting that occurred on September 7, 2006, the School District proposed transitioning Claimant to an appropriate elementary school within the School District.

Claimant receives psychiatric services funded by Medi-Cal.

20. Claimant posed a number of concerns about the facilities and/or services offered by the service agency.

Some facilities identified by the service agency did not satisfy its basic criteria. Right at Home group home did not obtain the appropriate license exemption from CCL to allow this facility to provide care for a child claimant's age. Two of the foster homes did not receive certification prior to rejection by the family or potential foster parent.

In the placements offered by the service agency, the family questioned whether claimant would receive all necessary services identified by the 4418.7 report and UCLA discharge summaries. The service agency established that the facilities provide the same services as a crisis home. In addition, if necessary, the service agency will authorize additional supplemental services to meet claimant's needs while in the out-of-home residential facility.

Claimant's family questions the services authorized by the service agency to maintain her in the family home, pending location of an acceptable residential placement. Some, but not all, of the respite and none of the coaching services were being provided at the time of the hearing. The service agency has made a reasonable effort to provide these services, given claimant's needs and the remote location of the family home. Claimant's family has declined the need for behavioral intervention in the family home, despite the recommendations of the 4418 and UCLA discharge summaries.

21. Claimant's family raised a number of reasonable issues regarding appropriate residential placement for her. Given the issue agreed upon by the parties, these matters have been disregarded as irrelevant.

22. The service agency has not placed claimant in a facility that complies with the recommendations of the 4418.7 report and UCLA discharge summaries.

23. The service agency made and continues to make reasonable efforts to identify a qualified out-of-home placement for claimant. The selection of the residential placement requires approval by claimant's family, the service agency and the facility owner or administrator. Among the facilities identified by claimant, at least some were qualified to meet claimant's needs. The family or the potential foster parent did not agree to the placement. Pending the out-of-home placement, the service agency has authorized services for claimant to be maintained in the family home. Claimant receives educational and psychiatric services, not funded by the service agency. No agreed upon crisis home has been located for claimant. Based on the evidence in the record, communication between the service agency and claimant's family is poor. Improved communication is likely to provide for more expeditious identification of a residential placement that complies with the recommendations of the 4418.7 report and UCLA discharge summaries that is agreeable to Claimant's family, the service agency, the facility owner/administrator and licensing authority and best serves claimant.

LEGAL CONCLUSIONS

1. Considering the facts (Findings 1 through 11, 14, 15, 16, 17, 18, 19 and 22), the recommendations (Findings 9, 10 and 11) and the relevant law (Findings 12 and 16), the

service agency has not provided an out-of-home residential placement in accordance with the Welfare and Institutions Code section 4418.7 recommendations and those of the University of California, Los Angeles - Neuropsychiatric Inpatient Hospital Discharge Summaries, dated June 21 and July 3, 2006.

2. Considering the facts (Findings 1 through 11, 14, 15, 16, 17, 18, 19, 20, 21 and 23), the recommendations (Findings 9, 10 and 11) and the relevant law (Findings 12 and 16), the service agency has offered an out-of-home residential placement for claimant in accordance with the Welfare and Institutions Code section 4418.7 recommendations and those of the University of California, Los Angeles - Neuropsychiatric Inpatient Hospital Discharge Summaries, dated June 21 and July 3, 2006.

ORDER

Given that the Inland Regional Center has offered an out-of-home residential placement for claimant in accordance with Welfare and Institutions Code section 4418.7 recommendations and those of University of California, Los Angeles – Neuropsychiatric Inpatient Hospital Discharge Summaries, the appeal of Allegra M. is denied.

NOTICE

This is a final administrative decision. All parties are bound by this Decision. Any party may appeal this Decision to a court of competent jurisdiction within ninety (90) days.

DATED: December 11, 2006

VALLERA J. JOHNSON
Administrative Law Judge
Office of Administrative Hearings